

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 13, 2004

STATE OF TENNESSEE v. DARLENE MULLICAN

**Direct Appeal from the Criminal Court for Dekalb County
No. 01-79F Lillie Ann Sells, Judge**

No. M2004-00729-CCA-R3-CD - Filed November 15, 2004

The Defendant, Darlene Mullican, pled guilty to attempted manufacture of methamphetamine, a Class D felony. See Tenn. Code Ann. §§ 39-17-417(a)(1), (c)(2)(A); 39-17-408(d)(2); 39-12-107(a). She was sentenced as a Range I standard offender to three years, to be served on probation. A probation violation warrant was subsequently filed and, after a hearing, the trial court revoked the Defendant's probation, ordering her to serve her sentence in confinement. The Defendant now appeals. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which GARY R. WADE, P.J. and JOHN EVERETT WILLIAMS, J., joined.

John B. Nisbet, Cookeville, Tennessee, for the appellant, Darlene Mullican.

Paul G. Summers, Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Bill Gibson, District Attorney General; and William Locke, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Defendant was convicted, upon a plea of guilty, of attempted manufacture of methamphetamine. She received a three year suspended sentence. She began serving her period of probation in December 2001. Don Fox, her probation officer, testified that, while on probation, the Defendant was convicted of two misdemeanors: making a harassing phone call and filing a false report. No probation violation warrant was filed as a result, but the Defendant was ordered to attend a behavior management program. Subsequently, in August 2003, the Defendant was arrested for DUI and driving on a revoked license. The Defendant pled guilty to these charges.

The Defendant testified that she completed approximately eighteen months of her probationary period without "too many" problems and had not taken any drugs during that time. She

explained that she “did good until [her] dad passed away” about six weeks prior to being arrested in August. At that point, she “messed up.” She asked the court not to revoke her probation, stating that she would abide by the terms of her sentence if the trial court reinstated her probation and/or increased its length of time.

The prosecutor requested the court to revoke the Defendant’s probation, citing her initial misdemeanor convictions followed by the current convictions as evidence that “we need to get [the Defendant’s] attention.” The trial court agreed, finding:

Well, one of these warrants she pled guilty to the DUI, she had a blood alcohol of .20. And . . . I think if we restarted this probation, we would simply be back again to visit [the Defendant]. For some reason [the Defendant] can’t seem to figure this all out.

But anyway, the court finds by a preponderance of the evidence that she has violated her probation and the court is going to have to order her and is ordering her to serve her sentence in this case.

The Defendant now complains that the trial court’s order is “too harsh.”

A trial judge is vested with the discretionary authority to revoke probation if a preponderance of the evidence establishes that a defendant violated the conditions of his or her probation. See Tenn. Code Ann. §§ 40-35-310, -311(e); State v. Shaffer, 45 S.W.3d 553, 554 (Tenn. 2001). “The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment.” State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

When a probation revocation is challenged, the appellate courts have a limited scope of review. This Court will not overturn a trial court’s revocation of a defendant’s probation absent an abuse of discretion. See Shaffer, 45 S.W.3d at 554. For an appellate court to be warranted in finding that a trial judge abused his or her discretion by revoking probation, “there must be no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred.” Id.

The trial court in this case had more than enough evidence before it to support its conclusion that the Defendant had repeatedly violated the terms of her probation. The Defendant had committed two misdemeanors during her initial period of probation but was allowed to continue her suspended sentence. Nevertheless, the Defendant committed two more misdemeanors. We agree that the Defendant is not taking seriously her opportunity for rehabilitation. We find no abuse of discretion in the trial court’s order of revocation. The Defendant’s appeal is without merit.

We affirm the judgment of the trial court.

DAVID H. WELLES, JUDGE